## UNITED STATES TAX COURT WASHINGTON, DC 20217

Larry S. Freedman & Sheri L. Freedman,	)
Petitioners,	)
v.	) Docket No. 23411-14
COMMISSIONER OF INTERNAL REVENUE,	)
Respondent.	)

## ORDER

On March 15, 2016, respondent filed a Motion To Dismiss for Lack of Jurisdiction seeking to dismiss for lack of jurisdiction so much of this case based upon adjustments to partnership items of Pinnacle Trading Partnership Opportunities, LLC, for the year 1999. In his motion to dismiss respondent states/asserts, inter alia:

11. Since the deficiency asserted in the notice of deficiency is attributable solely to adjustments to partnership items, the Court lacks jurisdiction over the deficiency. The Court only has jurisdiction to determine whether Sheri L. Freedman qualifies for innocent spouse relief.

On April 6, 2016, petitioners filed an Objection to respondent's motion to dismiss. In their Objection petitioners state/assert, inter alia:

- 2. The Notice [of Deficiency] asserts a deficiency premised on outsidebasis (a classic partner-level affected item) and Section 6662 basis-sensitive penalties.
- 3. Respondent concedes on Form 886-A attached to his Notice that the Notice is an affected item statutory notice of deficiency which alleges a deficiency that must be determined at the partner level.

\* \* \* \* \* \* \*

6. Respondent mistakenly seeks to dismiss this action on the contention this Court lacks jurisdiction over the portion of Respondent's own partner-level affected item Notice which asserts Section 6662 penalties, including those basissensitive subparts which are premised on outside basis.

Outside basis may be an affected item required to be properly determined in a partner-level deficiency proceeding. Thompson v. Commissioner, 729 F.3d 869, 873 (8th Cir. 2013); Jade Trading, LLC ex rel. Ervin v. United States, 598 F.3d 1372, 1380 (Fed. Cir. 2010); Petaluma FX Partners, LLC v. Commissioner, 591 F.3d 649, 655 (D.C. Cir. 2010); Greenwald v. Commissioner, 142 T.C. 308, 314-317 (2014); see I.R.C. secs. 6213(a), 6230(a)(2) (A)(i). Cf. United States v. Wood, 571 U.S. \_\_\_, 134 S.Ct. 557 (2013).

Upon due consideration, it is

ORDERED that, on or before April 28, 2016, respondent shall file a Response to petitioners' objection. In that Response respondent shall set forth and discuss fully respondent's position as to whether the Court here in the instant case has jurisdiction to review the outside-basis adjustments made in the deficiency notice for 1999 issued to petitioners.

## (Signed) Michael B. Thornton Chief Judge

Dated: Washington, D.C. April 6, 2016